Reserved on 26.05.2022
Delivered on 30.06.2022

Court No. - 10

Case :- COMPANY PETITION No. - 74 of 1999

Petitioner :- In The Matter Of Auto Tractors Ltd.
Counsel for Petitioner :- Vishnu Sahai,A.C.Srivastava,Anil Kumar Srivastava,Anupam Tripathi,Arun Prakash,Arvind Kr. Goswami,Ashok Kumar Pal,Ashutosh Gupta,Ayub Khan,Bhupeshwar Dayal,Brijesh Kr. Pandey,D.D. Chauhan,G.N. Sharma,Gaurav Srivastava,H.N.Sharma,Jainendra Kumar Mishra,K.B. Srivastava,Kartikeya Saran,Krishan Agarwal,Laxmi Kant,O.P.Mishra,Pankaj Agarwal,R.B.Pradhan,Rajeev Sen,Rajesh Kumar,Rajesh Kumar Shukla,Rama Shankar Mishra,Rama Shanker Mishra,Ramji Yadav,S.C. Kushwaha,S.R. Yadav,Sanjay Mishra,Sujeet Kumar Singh,U.N.Sharma,V.K. Shukla,Vijay Krishna Majumdar,Vishnu Sahai,Vivek Raj Singh
Counsel for Respondent :- V.N. Tandon,A.K.Mehrotra,Arun Prakash,Ashish Agrawal,Ashok Mehta,Ashwani Kr.Misra,C.S.C.,D.S. Singh,Dinesh Kakkar,I.M. Kushwaha,J. Nagar,J.P. Kushwaha,K.P.S. Kaushik,Lal Mani Singh,Mahboob Ahmad,Narendra Mohan, O.L. Rajneesh Kumar Singh, O.L. Sanjay Bose,O.L. O.P. Sharma,O.L.M.K. Bagri,O.P. Mishra,P.C. Shukla,P.S. Baghel,Pawan Kumar Tiwari,Pratik Kumar,R.S. Mishra,Raj Nath N.Shukla,Rajesh Kumar Singh,Rakesh Mishra,Ram Shankar Sharma,Ram Sheel Sharma, Subodh Kumar,Vishal Kakkar,Y.N. Tandon

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard Sri Ashok Mehta, learned Senior Advocate appearing for the Official Liquidator, Sri Manish Goyal, learned Additional Advocate General for the State, Sri Pratik J. Nagar, learned counsel for Life Insurance Corporation of India, Sri O.P. Mishra, learned counsel for Kotak Mahindra Bank, Sri Ashish Agarwal, learned counsel appearing for UPSIDA and Sri Virendra Kumar Dwivedi, Advocate holding brief of Sri Arun Prakash, learned counsel for the Bank of Baroda.

2. The Company under liquidation i.e. M/s. Auto Tractors Limited (*hereinafter called as* 'ATL') was incorporated in the year 1972 under the provisions of Indian Companies Act, 1956 (*hereinafter called as* 'Act of 1956'). The certificate of incorporation issued by Registrar of Companies

was 3654 of 1972. The nominal share capital of ATL was Rs.7,50,00,000/- divided into 75,00,000 equity shares of Rs.10/- each. All the shares were held by Government of Uttar Pradesh and is hundred per cent Government company as defined under Section 617 of Act of 1956.

3. The State Government for the planned industrial growth and development of District Pratapgarh, issued notification under Section 4(1) read with Section 17(4) of Land Acquisition Act, 1894 (*hereinafter called as* 'Act of 1894') on 23.07.1976 for acquiring land. Thereafter, notification under Section 6 was published on 24.07.1976.

4. On 09.03.1977, an indenture was executed between the Government of U.P. and U.P. State Industrial Development Corporation, now U.P. State Industrial Development Authority (*hereinafter called as* 'UPSIDA') and the land so acquired was transferred. Subsequently, on 30.10.1981, a tri party agreement was executed between the Governor, State of U.P., UPSIDC and ATL, wherein it was agreed that total area of 97.92 acres of land acquired by State which was transferred to UPSIDC was now given to ATL. The Company was to utilise the land for industrial growth and development of Pratapgarh.

5. Apart from the 97.92 acres of land given to ATL through tri party agreement on 30.10.1981, the Company has 15.70 acres of land from the State Government.

6. As the Company was facing losses, the Government of Uttar Pradesh closed the Company on 20.11.1990. The Government entered into a joint venture with one M/s. Sipani Automobiles Limited, Bangalore on 19.03.1991. According to the joint venture, M/s. Sipani Automobiles was to bring capital of Rs.555 lacs, out of which Rs.455 lacs was to be retained in ATL as interest bearing unsecured loan. However, M/s. Sipani Automobiles Limited only paid Rs.100 lacs. Hence, no shares were transferred as Rs.455 lacs remained unpaid.

7. As ATL was in financial crunch, the present winding up proceedings were initiated by one Wazir Chandra Malik, and this Court vide order dated 03.04.2001 appointed provisional liquidator. A recall application was moved and this Court on 08.05.2002 rejected the same and passed winding up order and directed the Official Liquidator to take over the assets and records of the Company. Further, the Court directed for the advertisement under Rule 24 of Companies (Court) Rules, 1959. On 14.02.2003, the Court appointed Official Liquidator as liquidator, and he was directed to take possession of the assets of the factory. On 23.02.2003, the Official Liquidator took possession as directed by the Court.

8. The assets of the Company were got valued in the year 2003, 2007 and 2010. The valuation submitted are as under:-

A.	**Valuation Details as per the Valuation Report Dated 10.04.2003**			
1	Land	88125045.00	88125045.00	88125045.00
2	Building Structure	105702587.00	54268214.13	40701160.59
3	Plant & Machinery	316126675.68	64156454.19	32078227.09
4	Misc Assets	11100000.00	5550000.00	2775000.00
5	Misc Furniture & Fixture	875000.00	437500.00	218750.00
	Total	**521929307.68**	**212537213.32**	**163898182.68**

B.	**Valuation Details as per Valuation Report Dated 22.11.2007**		
	Particulars	**Assessed Value**	**Realizable Value**
1.	Land	Rs.13,30,36,000.00	Rs.10,64,28,800.00
2.	Civil Work	Rs.7,06,69,762.00	Rs.5,65,35,810.00
3.	Trees	Rs.5,33,000.00	Rs.4,26,400.00
	Total Rs. 20,42,38,762.00		**Rs.16,33,91,010.00**

S. No.	**PARTICULARS**	**AREA OF LAND**	**VALUE AS PER CIRCULAR**	**VALUE AS PER MARKET VALUE**
1.	Factory Land Including open land & School Land	380480 Sq. Mt.	Rs.45,65,76,000/-	Rs.9,51,20,000/-

2.	Tanga Coloney Land	21690 Sq. Mt.	Rs.2,71,12,500/-	Rs.54,22,500/-
3.	Factory Construction including School & Residential Block	-	Rs.7,06,69,762/-	Rs.565,35,810/-
4.	Plant & Machinery	-	Rs.5,06,25,500/-	Rs.5,00,00,000/-
5.	Trees	-	Rs.5,33,000/-	Rs.4,50,000/-
6.	**Grand Total**			**Rs.20,75,28,310 /-**

9. The property of the Company which included land, building, plant and machinery was advertised five times and put on sale but the same could not be sold as no party made bid to purchase the property of Company in liquidation. Advertisements were published in newspapers during the period 2006-2008 disclosing the reserve price, chart of which is extracted hereasunder:-

YEAR 2006		
S. No.	**Particulars**	**Reserve Price (In Rs)**
1.	Land & Building Plant & Machinery	19,00,00,000.00 6,80,00,000.00
FEBRUARY 2007		
2.	Factory Land Tengua Colony Land Factory Building Tengua Colony Building Plant & Machinery	11,83,06,000.00 1,47,30,000.00 5,28,31,012.00 1,78,38,750.00 6,80,00,000.00
APRIL 2007		
3.	Plant & Machinery (Only)	6,80,00,000.00
March 2008		
4.	Factory Land Tengua Colony Land Factory Building Tengua Colony Building Plant & Machinery	11,83,06,000.00 1,47,30,000.00 5,28,31,012.00 1,78,38,750.00 6,80,00,000.00
APRIL 2008		
	Factory Land Tengua Colony Land Factory Building Tengua Colony Building	11,83,06,000.00 1,47,30,000.00 5,28,31,012.00 1,78,38,750.00

	Plant & Machinery	6,80,00,000.00
AUGUST 2008		
	Factory Land Tengua Colony Land Factory Building Tengua Colony Building Plant & Machinery	11,83,06,000.00 1,47,30,000.00 5,28,31,012.00 1,78,38,750.00 6,80,00,000.00

10. After the property was revalued on 17.03.2010, an offer was received by Official Liquidator from one Nissaa Enterprises Limited for purchase of plant and machinery for Rs.5,10,00,000/-. This Court on 29.11.2010 confirmed the sale of plant and machinery in favour of Nissaa Enterprises. On 13.12.2010, the possession of plant and machinery was handed over to its purchaser i.e. Nissaa Enterprises.

11. Thereafter, on 16.12.2011, a valuation report in regard to land of the Company was submitted by District Magistrate, which is as under:-

S. No.	LAND SITUATED AT	AREA OF LAND	VALUE AS PER CIRCLE RATE
1.	Badhanpur Town Area	30.719 Hectare or 307190 Sqmtr.	43,48,45,000.00
2.	Bhupia Mau	9.8280 Hectare or 98280 Sqmtr.	9,82,80,000.00
3.	Village Tengua	2.1690 Hectare or 21690 Sqmtr.	6,50,70,000.00
	Total		**59,81,95,000.00**

12. Meanwhile, after the sale of plant and machinery, claims were invited, which were received from the secured creditors, unsecured creditors, Government and workmen. The Claim Committee adjudicated the claim and submitted its report on 21.10.2015, a summary of which is as under:-

S. NO.	PARTICULARS	CLAIM AMOUNT	ADMITTED AMOUNT
1.	Admitted amount of E.P.F. Commissioner	Rs.72,86,957.00	Rs.22,81,087.00

2.	Admitted E.P.F. amount of Workmen		Rs.82,48,314.00
3.	621 Workmen	Rs.41,71,70,048.00	Rs.12,53,28,065.00
4.	Secured Creditors (First Charge on Raw Materials, Finished Goods, Stores, Book Debts L.C. etc.)	Rs.61,56,12,235.00	Rs.49,55,03,110.00
5.	Secured Creditors (First Charge on Fixed Assets)	Rs.2,75,27,236.00	NIL

13. This Court on 03.05.2017 allowed the claims determined by Claim Committee and the Official Liquidator distributed the interim dividend to secured creditors including EPF Commissioner and 621 workmen, summary of which is extracted hereasunder:-

S. No.	**Claimant/ Creditor**	**Claim Amount**	**Admitted Amount**	**Interim Dividend Paid**
1.	EPF Commissioner	72,86,957.00	22,81,087.00	**22,81,087.00**
2.	621 Workmen	41,71,70,048.00	12,53,28,065.00	**3,84,86,486.00**
3.	State Bank of Bikaner and Jaipur	15,25,30,726.00	3,24,21,601.00	**18,805.00** (transferred to ROC as Unpaid Divident)
4.	Bank of Baroda	41,97,92,885.00	41,97,92,885.00	**2,43,472.00**
5.	Kotak Mahindra Bank Ltd. (SBI)	4,32,88,624.00	4,32,88,624.00	**25,108.00** (transferred to ROC as Unpaid Dividend)
	Total Amount	**104,00,69,240.00**	**62,31,12,262.00**	**4,10,54,958.00**

14. The State Bank India, State Bank of Bikaner and Jaipur, Bank of Baroda having charge only on stock, which according to valuation report for Rs.2,81,00/-. Therefore, the three banks were to be paid as under:-

(a) Bank of Baroda - Rs.2,43,472/-

(b) State Bank of Bikaner and Jaipur, - Rs.18,805/-

(now merged with State Bank of India)

(c) Kotak Mahindra Bank Limited (assignee of State Bank of India) - Rs.25,108/-.

15. As the State Bank of Bikaner and Kotak Mahindra Bank did not come forward to collect their interim dividend, the amount was deposited by the Official Liquidator with Registrar of Companies, Kanpur on 19.02.2019 as unpaid dividend. Remaining amount of all three banks mentioned above was treated as unsecured loan, according to the judgment of the Apex Court rendered in case of SIDCO Leather Ltd.

16. Against the declaration of interim dividend by Official Liquidator based upon the Claim Committee report dated 21.10.2015, two company appeals being Appeal No. 05 of 2016 and 08 of 2016 were filed by Regional Provident Fund Commissioner and Life Insurance Corporation Ltd. In both these appeals, the appellate Court on 04.12.2017 held that the appeal will be considered after sale of land and plant belonging to the Company. The claim amount of Life Insurance was rejected due to non submission of document. However, the admitted amount of EPF Rs.22,81,087/- has already been paid on 03.01.2018. This Court on 06.07.2018 had directed the Official Liquidator to again get the assets valued. A report was submitted on 13.07.2018.

17. The Official Liquidator on 12.01.2021 received a proposal from Regional Manager, UPSIDA requesting for release of land of the Company in liquidation measuring 97.92 acres in favour of UPSIDA, and the authority was ready to pay entire dues of Company in liquidation amounting to Rs.67.92 crores. The proposal was forwarded to secured creditors/members of the Assets Sale Committee by the Official Liquidator on 14.01.2021 for inviting their objections. A meeting of Assets Sale Committee was also held on 18.02.2021 to discuss the

proposal of UPSIDA. The Claim Committee on 18.03.2021 redetermined the claim as on 08.05.2002 of all secured creditors based upon the amount proposed to be made available by UPSIDA and appeal filed by LIC, EPF Commissioner, SBI etc. A summary of amount determined by Claim Committee is extracted hereasunder:-

S. No.	**Particulars**	**Total Admitted Amount including 4% interest up to 07.05.2020**
1	Workmen (622)	Rs.21,73,93,377.57
	Total A	Rs.21,73,93,377.57
SECURED CREDITORS		
2.	SBBJ	Rs.5,89,89,360.27
3.	BOB	Rs.11,33,05,784.32
4.	Kotak Mahindra Assigned by SBI	Rs.8,92,15,712.23
5.	UPFC	Rs.3,11,82,205.08
6.	LIC	Rs.1,52,98,837.56
	Total B	Rs.30,79,91,899.46
GOVT. DUES		
7.	EPF Commissioner	Rs.63,11,060.95
8.	Central Excise	Rs.1,01,89,058.12
9.	Service Tax	Rs.16,04,25,086.28
	Total C	Rs.17,69,25,205.35
UNSECURED CREDITORS		
10.	Saed Ahmad	Rs.38,528.00
11.	Vinod Kumar	Rs.3,00,355.00
12.	Mahendra Nath	Rs.9,632.00
13.	Jai Vallabh	Rs.1,28,828.00
14.	Rajendra Bahadur Singh	Rs.25,800.00
	Total D	Rs.5,03,143.00
Total admitted claim including interest @4% A+B+C+D		Rs.70,28,13,625.39
Less available surplus disbursed to claimant to earlier		Rs.4,10,54,958.00
Total Balance Admitted Claim Payable		**Rs.66,17,58,667.39**

18. On the same date, a meeting of Assets Sale Committee was held to discuss the proposal of UPSIDA, in which representatives of Bank of Baroda, LIC, Kotak Mahindra Bank Limited, State Bank of India were present. During the meeting, the claim determined by the Claim Committee was circulated among the secured creditors/member of Assets Sale Committee, wherein all the members present agreed with the proposal of UPSIDA and recalculation of the claims by the Claim Committee. Written consent dated 02.04.2021 was received from Life Insurance Corporation of India. On 26.03.2021, an affidavit was received from the Bank of Baroda consenting to the proposal. Similarly, the Kotak Mahindra Bank submitted its affidavit dated 05.04.2021, and State Bank of India filed its affidavit in support of the proposal on 31.03.2021. All claims of secured creditors, workmen, unsecured creditors as well as Government department claims were admitted till the date of taking of possession of assets and records, and advertisement of petition i.e. 08.05.2002. Further, interest of 4% has been calculated till 07.05.2020.

19. Official Liquidator after receiving the proposal of UPSIDA, calling of the meeting of the Assets Sale Committee and secured creditors, report of Claim Committee and the written consent of all secured creditors filed its report no. 66 of 2021 on 28.05.2021, with a prayer for allowing the propsal of UPSIDA dated 12.01.2021 with condition that UPSIDA undertakes through an affidavit that all future liabilities with regard to claims of creditors, workmen etc., as well as contributories and any litigation instituted in any court of law shall be dealt and settled by UPSIDA. Further, prayer was made for directing UPSIDA to deposit Rs.67.92 crores and allowing Official Liquidator to hand over the assets of Company as mentioned in the proposal as well as lease deed dated 09.03.1977. It is also prayed that Official Liquidator be allowed to distribute the admitted amount as at 08.05.2002 along with interest up to 07.05.2020 and also to distribute remaining amount of workmen claim as

settled by Claim Committee on 21.10.2015 as well as 4% interest up to 07.05.2020.

20. A counter affidavit was filed by UPSIDA on 22.09.2021. In the said affidavit, UPSIDA did not accept the conditions which were laid down by the Official Liquidator. It was stated that Official Liquidator must quantify and specify the exact amount of any future liability which may arise afterwards. In absence of any such quantification and specification, it was not possible for UPSIDA to undertake any contingent/future liability.

21. The Official Liquidator filed its reply on 07.02.2022 to the counter affidavit filed by UPSIDA stating therein that the total land held by the Company is 44.044 hectares, out of which only 39.1680 hectares (97.92 acres) was leased out by UPSIDA and a request was made for taking the additional land i.e. 4.876 hectares and the amount which is paid for extra area of land shall be utilised as a reserve amount.

22. On 16.03.2022, UPSIDA filed a claim for a sum of Rs.2,40,84,753/- on the ground that State Government on 02.12.1982 and 03.12.1982 had directed UPSIDA to give a short term loan upto Rs. 1 crore to ATL. The present outstanding as on 28.02.2022 was Rs.2,40,84,753/-.

23. UPSIDA filed a counter affidavit replying the rejoinder affidavit filed by Official Liquidator on 04.04.2022 and categorically stated that it was not in a position to accept any contingent/future liability. It was also stated that UPSIDA is not agreeable to take the land comprising 4.876 hectares and its proposal is only to 97.92 acres. On 05.05.2022, a supplementary affidavit was filed by UPSIDA stating that decision has been taken on 25.04.2022, wherein it has been resolved that if land of ATL is given to UPSIDA, then UPSIDA will accommodate its claim amount in the cost of plot and the application filed for the claim will not be pressed. Copy of the decision taken by the authority has been brought on record as Annexure-1.

24. Similarly, on the same day i.e. 05.05.2022, the State Government filed its reply affidavit to the Official Liquidator's Report No. 66 stating therein that on 20.11.2020 a meeting for discussing industrial development of District Pratapgarh was held, and it was resolved that UPSIDA will make payment of entire claim of creditors of the Company in liquidation, quantifying at Rs.67.92 crores, and UPSIDA shall develop the land released for industrial purpose. The meeting was presided under chairmanship of Commissioner, Department of Infrastructure and Industrial Development. It is specifically mentioned that from the amount deposited by UPSIDA, a corpus fund may be reserved under the orders of the Court for any future liability. A request has also been made for issuing of sale certificate in favour of UPSIDA, and for handing over of the possession within the stipulated period.

25. Sri Ashok Mehta, learned Senior counsel appearing for the Official Liquidator submitted that apart from the movable assets i.e. plant and machinery of ATL, the land and building could not be sold despite best efforts made on earlier five occasions. It was in the year 2021 that UPSIDA came forward with a proposal for clearing all the dues of the Company amounting to Rs.67 crores and odd, and the land which was given to the Company measuring 97.92 acres be released in their favour.

26. According to him, the Claim's Committee calculated the outstanding claim of both the secured and unsecured creditors, in the meeting held on 18.03.2021 of the Assets Sale Committee, in which all the stakeholders including the secured creditors participated and claim of UPSIDA was considered and was approved in principal. Moreover, all the secured creditors had given their written consent/affidavit in favour of proposal forwarded by UPSIDA.

27. According to him, the State also wants that the land of the Company may be reverted back to UPSIDA on the payment of Rs.67.92

crores, so the entire dues of the Company in liquidation are cleared and the land is used for industrial development of the State. According to him, the Official Liquidator has no objection to the proposal, as all the creditors have given their consent in favour of the proposal and only after deposit of money by UPSIDA, the land is to be transferred. He next invited the attention of the Court to page 193 of Official Liquidator's Report No. 66 which are minutes of the meeting of the Assets Sale Committee held on 18.03.2021, where all the representatives of secured creditors had agreed and signed the proposal. He also invited attention of the Court to the affidavit given by Bank of Baroda on 26.03.2021 wherein revised claim has been accepted by the Bank.

28. Sri Mehta also invited attention of the Court to the meeting dated 20.11.2020 held under the chairmanship of Commissioner, Industrial Development, U.P. wherein decision was taken, pursuant to which, the proposal was made by UPSIDA. He also placed before the Court the original notification under Section 4 read with Section 17(4) of the Act of 1894 by which the land was acquired in the District Pratapgarh for public purpose, namely for planned industrial development through UPSIDC (Now UPSIDA).

29. He next invited the attention of the Court to provisions of Section 546 (1) (ii) and (iii) which envisages for the liquidator to exercise certain powers subject to sanction. The section provides that any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, whereby the company may be rendered liable. Relevant provision of Section 546 (1)(ii) and (iii) are extracted hereasunder:-

> *"(ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against*

the company, or whereby the company may be rendered liable; or

(iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof."

30. According to Sri Mehta, Official Liquidator through the Assets Sale Committee considered the proposal/claim of UPSIDA and was thus entering for an arrangement, by which the claims of all the creditors are fulfilled and the land given to the Company through tri part agreement in the year 1981 is reverted back to UPSIDA.

31. According to him, in such type of arrangement, the liquidator is able to satisfy all the claims of the secured creditors with their consent, as well as of the workmen and the land leased out to the Company is reverted back to Government nodal agency.

32. Sri Mehta then contended that UPSIDA should also take up the future liability if arises and any claim is set up by any person after the judgment of this Court. However, on the opposition from the UPSIDA and State, Sri Mehta very fairly conceded the fact that once the property in question was transferred through a sale to UPSIDA, no future liability could be fastened upon UPSIDA nor there is any provision to such effect. However, he submitted that 5% of the amount may be retained by Official Liquidator to meet out any contingent liability if it arises.

33. Sri Manish Goyal, learned Additional Advocate General appearing for the State submitted that initially the land was acquired in 1976 for the planned development through UPSIDC, and an indenture was entered and executed between the State and UPSIDC and the land was transferred.

Subsequently, the land measuring 97.92 acres through tri part agreement on 30.10.1981 was given to the ATL for establishing a factory. According to him, as the Company was closed down due to losses and the land could not be sold by Official Liquidator despite best efforts, the State Government had proposed to take back the same through its nodal agency i.e. UPSIDA, clearing all the dues of the Company in liquidation amounting to Rs.67.92 acres. As all the secured creditors have given the consent to the proposal of UPSIDA and there is no hindrance on part of any secured or unsecured creditor of the Company, in the best interest of the State as well as the Company, the land may be transferred to UPSIDA upon payment of the amount specified above.

34. He then contended that the sale certificate may be issued instead of sale-deed as it would unnecessarily require payment of stamp duty and the cost will increase, instead a sale certificate would suffice the purpose. He opposed the prayer of Official Liquidator for passing on the liability to the purchaser. According to him, the agreement is to pass on the land subject to payment, free from encumbrance and no liability can be fastened upon UPSIDA, as all the claims settled by the Claim Committee is covered under the amount being paid by UPSIDA.

35. Sri Ashish Agrawal, learned counsel appearing for the UPSIDA submitted that proposal dated 12.01.2021 was considered by Assets Sale Committee on 18.03.2021, wherein all the secured creditors had participated and signed the minutes consenting to the proposal of UPSIDA. According to counsel, UPSIDA is ready to transfer the amount agreed to the tune of Rs.67.92 crores within two weeks from the date of order and Official Liquidator may be directed to hand over the proposed land measuring 97.92 acres within the time fixed by the Court. He laid emphasis to the fact that no liability could be passed on to the purchaser once the sale certificate is issued, as the proposal of UPSIDA is specific that it is ready to clear all the dues of the Company in liquidation as

agreed to the tune of Rs.67.92 crores and land measuring 97.92 acres to be reverted back.

36. Sri Pratik J. Nagar, learned counsel appearing for Life Insurance Corporation of India very fairly submitted that he will not press the special appeal filed on behalf of Corporation after the proposal submitted by UPSIDA is accepted by this Court, and necessary orders are passed.

37. Sri O.P. Mishra, learned counsel appearing for Kotak Mahindra Bank did not oppose to the proposal of UPSIDA and consented to the proposal for transferring 97.92 acres of land on payment of Rs.67.92 crores. He however submitted that 5% amount to be retained by Official Liquidator should not be for more than two years and in case no claim is made within two years from the date of passing of the order, the money should be distributed as agreed.

38. Learned counsel appearing for Bank of Baroda and State Bank of India also consented to the proposal of UPSIDA and did not raise any objection.

39. I have heard this company petition at length and have given anxious consideration to the argument raised by various counsels and material on record.

40. This is a case where a Government company was incorporated under the provisions of Section 617 of Act of 1956, having hundred per cent shareholding of the State Government. The Company in liquidation was transferred land in two sets, one through a tri part agreement executed in the year 1981 between the State, UPSIDA and ATL measuring 97.92 acres. While the second set of land was given by State Government measuring 15.70 acres.

41. Initially, the State in the year 1976 had acquired 97.92 acres of land through UPSIDC for planned industrial development in District

Pratapgarh. Prior to the said acquisition, ATL was incorporated. Need arose for setting up the factory of ATL for which this land measuring 97.92 acres which was provided by State to UPSIDC, through tri part agreement was handed over to ATL (Company in Liquidation).

42. Due to business loss, the Company was wounded up and a provisional liquidator was appointed in the year 2001, finally after challenge of the order of 2001, the Company was wound up and possession of land and assets were taken over by Official Liquidator on 08.05.2002.

43. Despite best efforts of this Court, only the plant and machinery of the Company was sold to one Nissaa Enterprises Ltd. in the year 2010 for Rs.5,10,00,000/-. The land and building of the Company could not be sold for clearing the outstanding dues of both the secured and unsecured creditors as well as the workmen.

44. The State Government swung into action for industrial development in District Pratapgarh and needed land for setting up industrial units. It was for the first time on 20.11.2020 that a meeting of the officials of the State Government and UPSIDA (the nodal agency of State) was held and a decision was taken to approach the Official Liquidator with a proposal for clearing out the dues of the Company and getting back the land measuring 97.92 acres which was transferred through tri part agreement in the year 1981.

45. The proposal of UPSIDA was put before all the secured creditors of the Company in the meeting of the Assets Sale Committee held on 18.03.2021, where an unanimous decision was taken approving the proposal of UPSIDA, thereafter, necessary written consent and affidavits were given for transferring the land measuring 97.92 acres to UPSIDA, subject to deposit of Rs.67.92 crores. All these proceedings were brought before the Court through Official Liquidator’s Report No. (Judicial) 66 of

2021 dated 28.05.2021.

46. This proposal more or less accepted by all the stakeholders i.e. secured creditors, State and UPSIDA. The only objection by State and UPSIDA is to the fastening of future liability upon UPSIDA, post issuance of sale certificate.

47. This is a case where hundred per cent owned Government company to whom the land has been provided by State through its nodal agency is being taken back on the condition of clearing all the dues of the Company which is in loss and closed for almost 20 years. All the money of the secured financial institutions are blocked, and the workmen have not got their entire dues cleared since the closure of the Company and passing of winding up order.

48. The State wants planned industrial development in the District of Pratapgarh by setting up industrial units, on the land which is lying vacant for more than two decades and no commercial or industrial activity is going on. The object of the State Government through reversion of land back to UPSIDA is not only to generate industrial and commercial environment in the District of Pratapgarh, but also to provide employment to the youth living in the surrounding area.

49. By this action of the State, on the one hand, land will be put to maximum utilisation by providing employment through industrial growth, while on the other hand, it will settle all the dues of the financial institutions (secured creditors) and also of those who were thrown out of job after the closure of the Company. This action of the State will benefit all the strata of the society.

50. In this 21st Century, when there is rapid industrial growth happening throughout the globe, the initiative taken by State Government should be respected and every effort should be made for setting up industries in the State, creating jobs for the youth and making life of citizens better.

51. Keeping such vast stretch of land vacant, which was acquired in the year 1976 for planned industrial development, without any industrial output amounts to denial of livelihood to thousands of people of State. Time has come, when the Court has to take proactive steps for the betterment of the people in helping out the Government for making progress and getting the industrial policy implemented.

52. This Court finds that in case the land was sold below the reserve price, it would not have served the purpose in satisfying all the secured creditors and workmen. The proposal of UPSIDA takes care of all the dues which has accumulated during this period of creditors and workmen, which will be cleared, and the land will be put to maximum use.

53. Section 546 (1)(ii) and (iii) empowers an Official Liquidator for entering into such type of compromise or arrangement with creditors or persons claiming to be creditors, subject to sanction of the Court. Since all the creditors had given their consent, including the UPSIDA who has waived its dues upon the Company vide affidavit dated 05.05.2022 are entitled for such compromise and arrangement, once the consent is there of all the stakeholders and the proposal is not objected by Official Liquidator.

54. This Court finds that despite best efforts, the land and building could not be sold for the reserve price on earlier five occasions and the proposal made by UPSIDA cannot be ignored, being acceptable to all creditors and workmen.

55. In view of above, subject to deposit of Rs.67.92 crores, sale certificate shall be executed in favour of UPSIDA and the land measuring 97.92 acres shall be reverted back. In **Vishwanath Agrawal vs. State of U.P. and others, 2004 (4) AWC 3604**, the co-ordinate Bench of this Court while considering as to whether stamp duty was attracted in case of a sale certificate being issued pursuant to the auction conducted for sale

of land and building of a company in liquidation, the Court held that as the land was purchased in auction proceedings, the provisions of Section 47-A of Indian Stamp Act was attracted and was liable to pay stamp duty.

56. In **Bhupendra Singh vs. Board of Revenue, U.P., Allahabad and another, 2012 SCC Online All 1948**, co-ordinate Bench of this Court while dealing with chargeability of stamp duty on a sale certificate issued by subordinate court held that it attracted stamp duty.

57. Similar view was taken by co-ordinate Bench in **M/s. Saya Traders vs. State of U.P. and others, 2010 (111) RD 573**, wherein property of the company in liquidation was auctioned and stamp duty was charged upon the sale-deed executed, the Court found that it was chargeable.

58. However, in the present case, no auction of land and building has been held, and the land measuring 97.92 acres of the company in liquidation, which was leased out in the year 1981 by UPSIDA is being reverted back on the condition of clearing all the dues of the Company i.e. ATL. Thus, there is no requirement for execution of any sale-deed and only sale certificate is needed to be issued to UPSIDA on the deposit of Rs.67.92 crores.

59. The land in question was originally transferred to the company in liquidation by a tri part agreement in the year 1981, is being reverted back to nodal agency of the State for which original acquisition was made in the year 1976.

60. Thus, this Court accepts the proposal made by UPSIDA on 12.01.2021 and allows the transfer of 97.92 acres of land situated in District Pratapgarh, in view of consent given by all the stakeholders i.e. secured creditors to the proposal made by UPSIDA, on the conditions, which are as under:-

(a) UPSIDA shall deposit the amount of Rs.67.92 crores with

the Official Liquidator attached with this Court within two weeks from the date of order;

(b) On deposit of the aforesaid amount, Official Liquidator shall submit report to the Court within two working days;

(c) The sale certificate shall be issued by Official Liquidator in favour of UPSIDA within two weeks, after completing all the necessary formalities;

(d) The Official Liquidator shall retain 5% of the total amount for a period of two years;

(e) The amount due to the financial institutions (secured creditors) and workmen as adjudicated by the Claim's Committee shall be released subject to approval of the Court within one month from the date of issuance of sale certificate;

(f) The date of admitted claim of all the creditors (secured creditors) and workmen shall be 08.05.2002 and they will be entitled to 4% interest till 07.05.2020;

(g) UPSIDA shall not be liable for any future liability arising after the date of order of this Court;

(h) Any remaining amount after the distribution of claims of secured creditors, unsecured creditors, workmen etc. may be retained in a separate account which may be applied for meeting future liability;

61. Official Liquidator's Report No. (Judicial) 66 of 2021 stands **disposed of**.

Order Date :- 30.06.2022
V.S.Singh

Digitally signed by VIDYA SAGAR SINGH
Date: 2022.06.30 14:54:17 IST
Reason:
Location: High Court of Judicature at Allahabad